(16,434.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 655.

ALBERT F. HOLDEN, PLAINTIFF IN ERROR,

vs.

HARVY HARDY, SHERIFF OF SALT LAKE COUNTY, IN THE STATE OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1896.

a In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant.

On *habeas corpus.*

Transcript in Mine Case.

1 STATE OF UTAH,
County of Salt Lake.

In the Justice's Court of the First Precinct, Salt Lake City.

Before W. H. Sells, justice of peace.

THE STATE OF UTAH
vs.
A. F. HOLDEN, Defendant.

Complaint.

On this twentieth day of June, A. D. one thousand, eight hundred and ninety-six, before me, W. H. Sells, justice of the peace within and for the first precinct of Salt Lake City, Salt Lake county, State of Utah, personally appeared C. O. Whittemore, county and prosecuting attorney for the county of Salt Lake, in the State of Utah, in his official capacity, and in the name and by the authority of the State of Utah, informs the court upon his oath that the said defendant, Albert F. Holden, on the 6th day of June, A. D. 1896, at the county of Salt Lake, State of Utah, unlawfully did employ one John Anderson to work and labor as a miner in the underground workings of the Old Jordan mine, in Bingham canyon, in the county aforesaid, for the period of ten hours each day, and said defendant, on the date aforesaid and continuously since said time, has unlawfully required said John Anderson, under and by virtue of said employment, to work and labor in the underground workings of the mine aforesaid for the period of ten hours each day, and that said employment was not in case of an emergency or where life or property was in imminent danger, contrary to the provisions of the statute of the State aforesaid, and against the peace and dignity of the State of Utah.

C. O. WHITTEMORE,
County Attorney.

Subscribed and sworn to before me the day and year first above written.

W. H. SELLS,
Justice of the Peace.

2 (Title of Court and Cause.)

Warrant of Arrest.

The State of Utah to the sheriff, constable, or any policeman of Salt Lake county, State of Utah, Greeting:

A complaint, upon oath, having been this day made before me, W. H. Sells, a justice of the peace, within and for the first precinct, Salt Lake City, county of Salt Lake, State of Utah, by C. O. Whittemore, county attorney, that the offense of violating the eight-hour law, the same being chapter 72 of the Laws of the State of Utah has been committed, and accusing Albert F. Holden thereof:

You are therefore commanded forthwith to arrest the above-named Albert F. Holden and bring him before me, forthwith, at my office in said precinct and county, or, in case of my absence or inability to act, before the nearest and most accessible magistrate in this county, to answer to the charge preferred against him.

Witness my hand at Salt Lake City, in said county, this 22nd day of June, 1896.

(Signed) W. H. SELLS,
Justice of the Peace.

STATE OF UTAH, }
County of Salt Lake, } ss:

I hereby certify that I received the within warrant on the 22nd day of June, A. D. 1896, and served the same by arresting the within-named defendant Albert F. Holden, and bringing him into court this 22nd day of June, A. D. 1896.

(Signed) HARVEY HARDY, *Sheriff,*
Per JOHN MONTGOMERY, JR.,
Deputy Sheriff.

Fees, $2.00.

3 (Title of Court and Cause.)

And now comes the defendant and for a plea to the complaint herein, says he is not guilty in manner and form as charged.

And for a further plea the said defendant, and admitting that at the time and place alleged he employed the said John Anderson for the hours per day, and for the work and in the mine alleged, and that the said John Anderson has since worked in pursuance of said employment, says he is not guilty because he is a native-born citizen of the United States, residing in the State of Utah, that the said John Anderson voluntarily engaged his services for the hours per day alleged, and that the facts charged do not constitute a crime, because the act of the legislature of the State of Utah, which creates and defines the supposed offense, and is known as chapter LXXII of the laws of the State of Utah, approved March 30th, 1896, is repugnant to the Constitution of the United States, and especially to that part of said Constitution known as the XIV amendment, and that the said act of the legislature of the State of Utah, is void,

and repugnant to and in violation of the Constitution of the United States in these respects:

It deprives the defendant and all employers and employees of the right to make contracts in a lawful way and for lawful purposes.

It is class legislation and not equal or uniform in its provisions.

It deprives the defendant and employers and employees of the equal protection of the laws, abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law.

THOS. MARSHALL,
W. H. DICKSON,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Defendant.

4 (Title of Court and Cause.)

Copies of Entries in Justice's Docket.

Filed affidavit of C. O. Whittemore this 20th day of June, 1896, charging defendant with the crime of violating the eight-hour law. Warrant of arrest issued on the 22d day of June, 1896, and thereafter warrant returned on the 22d day of June, 1896. Defendant appeared on the 22d day of June, 1896, and entered plea of not guilty. Case set for trial on the 25th day of June, 1896, 9 a. m. Defendant admitted to bail in the sum of his own recognizance. Plea of defendant filed.

Case tried on the 25th day of June, 1896, before the court, and the people were represented by C. O. Whittemore, attorney, and the defendant by Bennett, Harkness, Howat & Bradley, attorneys. Witnesses sworn and examined on the part of the people *were* Albert F. Holden.

Now, on this 25th day of June, 1896, at 9 o'clock a. m., this cause coming on to be heard, and The State, the plaintiff herein, appearing by C. O. Whittemore, county attorney, and Frederick Garfield Waite, and the defendant appearing in person and by Messrs. Bennett, Harkness, Howat & Bradley, his attorneys, and the court having heard the evidence in the case and being fully advised in the premises, doth find that the defendant is guilty as charged in the complaint herein.

It is therefore ordered and adjudged by the court, that the defendant is guilty of a misdemeanor as charged in the complaint herein in violating the provisions of chapter 72 of the Laws of the State of Utah of 1896, approved March 30th, 1896, and now in force.

And it is therefore further ordered and adjudged that said defendant pay a fine of fifty dollars ($50) and the costs of this suit taxed at seven and $\frac{80}{100}$ dollars ($7.80), and that the defendant be imprisoned in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven (57) days, or until said fine and costs be paid, if they be sooner paid, or until so much of said fine and costs

be paid as shall remain due and unpaid after deducting from said fine and costs the amount represented by each day of said confinement at hard labor at the rate of one dollar per day, or until the same be secured to be paid as provided by law.

5 (Title of Court and Cause.)

Commitment.

The State of Utah to the sheriff of Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing John Anderson to work and labor as a miner in the underground workings of the Old Jordan mine in Bingham cañon, Salt Lake county, Utah, for a period of ten hours each day, contrary to the provisions of chapter LXXII of the Laws of 1896 of the State of Utah, said crime having been committed within the limits of Salt Lake county, and State of Utah, on the 6th day of June, A. D. 1896, contrary to the statutes of said State of Utah in such case made and provided; and,

Whereas, the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50) and costs taxed at seven and $\frac{80}{100}$ dollars ($7.80) and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days, or until said fine and costs be fully paid, if it be sooner paid; and,

Whereas, said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom;

Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days, or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars ($57.80) be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

6 STATE OF UTAH, }
County of Salt Lake. }

To the honorable the supreme court of the State of Utah:

The petition of Albert F. Holden respectfully shows: That he is a native-born citizen of the United States and a citizen of the State of Utah, residing in the city and county of Salt Lake.

That he is imprisoned and restrained in his liberty by Harvey Hardy, acting as sheriff of the county of Salt Lake in said State of Utah, and is in the custody of said sheriff.

That the cause of his imprisonment is as follows:

That on or about the 20th day of June, 1896, C. O. Whittemore, county attorney for said Salt Lake county, filed in the justice's court of the first precinct for said city of Salt Lake and before W. H. Sells, Esq., the justice of the peace of said precinct, a complaint against your petitioner for a violation of chapter LXXII of the Laws of the Legislature of the State of Utah by the employment for more than eight hours per day of John Anderson, a copy of which complaint is annexed and made a part hereof. That a warrant was issued, your petitioner arrested, and a copy of the warrant and return thereon, is annexed and made a part of this petition.

That your petitioner filed pleas to said complaint, a copy of which is annexed as a part of this petition.

That afterward, on the 25th day of June, 1896 the cause was heard in said court and your petitioner adjudged guilty as charged, and adjudged to pay a fine of fifty dollars and in default of payment to be imprisoned in the county jail of Salt Lake county, Utah.

A copy of the docket and proceedings before said court is annexed and make a part hereof.

That in default of payment, a warrant of commitment was issued by said justice from said court, and delivered to the sheriff of said county, who arrested and holds your petitioner in actual custody on said warrant of commitment, a copy of which is annexed and made a part hereof.

And on information and belief, your petitioner alleges that
7 no other or further cause exists for the imprisonment of your petitioner.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued returnable in the supreme court of the State of Utah, that your petitioner be dischared from his imprisonment and that such relief may be granted as the case requires.

ALBERT F. HOLDEN, *Petitioner.*

STATE OF UTAH,
County of Salt Lake, } *ss:*

Albert F. Holden, being duly sworn, says: I am the petitioner named in the foregoing petition, and said petition is true of my own knowledge, except as to matters stated therein on information and belief, and as to those matters I believe it to be true.

—— ——.

Subscribed and sworn to before me, June 29, 1896.

C. E. STANTON, *County Clerk,*
[SEAL.] By FRED. W. DENNIS, *Deputy.*

STATE OF UTAH,
County of Salt Lake, } ss:

STATE OF UTAH
vs.
ALBERT F. HOLDEN.

On the annexed petition of Albert F. Holden a writ of *habeas corpus* is allowed, returnable before the supreme court of the State of Utah, at 10 o'clock a. m. on the 14th day of September, 1896, at the court-room in Salt Lake City, Utah, and J. H. Miller is appointed to serve said writ.

C. S. ZANE,
Chief Justice Supreme Court, Utah.

STATE OF UTAH,
County of Salt Lake, } ss:

Harvey Hardy, sheriff of the county of Salt Lake, State of Utah:

You are commanded to have the body of Albert F. Holden, by you detained as it is alleged, before the supreme court of the State of Utah, at the supreme court room in the city and county building in Salt Lake City, Salt Lake county, State of Utah, at 10 o'clock a. m. on the 29th day of June, A. D. 1896, to be dealt with according to law, and to abide such order as the court or judge thereof shall make in the premises and have with you then and there this writ, with a return of your doings in the premises.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

8 STATE OF UTAH,
Salt Lake County, } ss:

J. H. Miller, being duly sworn, says that on the 1st day of July, 1896, he served the original writ, of which the foregoing is a true copy, by leaving said original writ with John Montgomery, Jr., a deputy sheriff of said county, the person holding and detaining said Albert F. Holden in custody, the said Harvey Hardy being sick and confined to his house and not having said Albert F. Holden in custody.

J. H. MILLER.

[SEAL.] Subscribed and sworn to before me by said J. H. Miller this 1st day of August, 1896.

WM. M. BRADLEY,
Notary Public, Salt Lake County, Utah.

It is stipulated that the foregoing is a full and complete transcript of the record and proceedings in this case, including the proceedings in the justice's court, and is a full transcript of the case for hearing in this court, except the sheriff's return to the writ, which, when made, may be added to the transcript as a part thereof.

——— ———,
Attorneys for the State.

——— ———,
Attorneys for Petitioner.

8¼ In the Supreme Court of the State of Utah.

STATE OF UTAH
v.
ALBERT F. HOLDEN. } Return on *Habeas Corpus.*

To the hon. the supreme court of the State of Utah and to the judges of said court:

The undersigned, sheriff of Salt Lake county, State of Utah, for answer and return to the petition and writ of *habeas corpus* herein respectfully states—

That on the 1st day of July, 1896, the writ was personally served by me, in the city and county of Salt Lake, State of Utah, and I annex as part of my return the writ as served.

At the time of service I had the said Albert F. Holden in my custody, as such sheriff.

That the cause and ground of his detention is as follows:

A commitment dated the 25th day of June, 1896, issued and delivered to by W. H. Sells, Esq., a justice of the peace of the first precinct, in said Salt Lake City, and in pursuance of shich I arrested and detained the said Albert F. Holden. I attach a full, true, and correct copy of said commitment as part of my return.

The execution of said commitment by me is the sole cause of the arrest and detention of said Holden.

By direction of the court I released the said Albert F. Holden on recognizance until the further order of the court.

Respectfully submitted.

HARVEY HARDY,
Sheriff Salt Lake County,
By JOHN MONTGOMERY, JR.,
Deputy Sheriff.

8½ In the Justice Court of the First Precinct, Salt Lake City, County of Salt Lake, State of Utah.

THE STATE OF UTAH
vs.
ALBERT F. HOLDEN, Defendant. } Commitment.

The State of Utah to the sheriff of said Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing one William Hooley to work and labor in a certain concentrating mill in Salt Lake county, Utah, for a period of twelve hours each day, contrary to the provisions of chapter 72 of the Laws of 1896 of said State of Utah, said crime having been committed within the limits of Salt Lake county and State of Utah on the 6th day of June, A. D. 1896,

contrary to the statutes of said State of Utah in such case made and provided; and

Whereas the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50.00) and costs, taxed at seven and $\frac{80}{100}$ dollars ($7.80), and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days or until said
8½ fine and costs be fully paid; and

Whereas said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom:

Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden, and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars ($57.80) be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

Marked: In the justice court of the first precinct, Salt Lake City, Utah. Title of court and cause. Sheriff's return. Filed in supreme court, Sept. 14th, 1896. L. P. Palmer, clerk supreme court of Utah.

9 In the Supreme Court of the State of Utah, Regular September Term.

SEPTEMBER 17, 1896.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant.

This cause, coming on regularly to be heard, was argued by Thomas Marshall and Robert Harkness, for the petitioner, and by C. S. Varian and O. W. Powers, in reply, was submitted, and by the court taken under advisement.

Title of Court and Cause.

OCTOBER 29TH, 1896.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the discharge of the petitioner be, and the same is hereby, denied and he is remanded to the custody of the sheriff named until discharged according to law.

Dated October 29, 1896.

10 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN
v.
HARVEY HARDY, Sheriff.

ZANE, *C. J.:*

The plaintiff was found guilty of a misdemeanor by a justice of the peace, who assessed a fine against him of $50.00, and, upon a refusal to pay, committed him. To obtain his liberty he has presented this petition for a writ of *habeas corpus.*

The offence charged consisted of employing one William Hooley in underground mining more than eight hours per day, in violation of a law entitled "An act regulating the hours of employment in underground mines and in smelters and ore reduction works," as follows:

"SECTION —. The period of employment of workingmen in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is is imminent danger.

SECTION 2. The period of employment of workingmen in smelters, and all other institutions for the reduction or refining of ores or metals shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SECTION 3. Any person, body corporate, agent, manage- or
11 employer, who shall violate any of the provisions of section- 1 and 2 of this act, shall be deemed guilty of a misdemeanor."

This statute limits the hours of employment of laboring men in underground mines and smelters or other works for the reduction of ores or refining of metals to eight hours per day.

The question for our consideration and decision is, Had the legislature the power to enact this law?

Article 16 of the constitution of this State is as follows (Laws 1896, page 219):

"SECTION 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the State.

SEC. 2. The legislature shall provide by law, for a board of labor, conciliation, and arbitration which shall fairly represent the interests of both capital and labor. The board shall perform duties, and receive compensation as prescribed by law.

SEC. 3. The legislature shall prohibit:

1. The employment of women, or of children under the age of fourteen years in underground mines.

2. The contracting of convict labor.

3. The labor of convicts outside prison grounds, except on public works under the direct control of the State.

4. The political and commercial control of employés.

SEC. 4. The exchange of black-lists by railroad companies, or other corporations, associations or persons is prohibited.

SEC. 5. The right of action to recover damages for injuries result-

ing in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

12 SEC. 6. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State county or municipal governments; and the legislature shall pass laws to provide for the health and safety of employés in factories, smelters and mines.

SEC. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article."

The first section of the act makes it the duty of the legislature to protect the rights of laboring men by the enactment of just laws calculated to promote the indistrial welfare of the prople—such laws as will be just to all classes.

The command is to the law-making department of the State, and the only express limitations upon the power are that such laws shall be just and calculated to promote the welfare of the industrial classes. The legislature must decide whether the law is just and adapted to the purpose named; and unless the law is so palpably unjust or so clearly not calculated to promote the purposes mentioned in the constitution as to remove every reasonable doubt that it is unjust, or that it is not calculated to promote the purposes expressed in the constitution, the court should not hold it without the scope of the authority mentioned in that instrument.

The first clause of section 6 declares that "eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, county, or municipal government."

13 We presume the object of this provision was to protect the laboring man from the injurious consequences of prolonged physical effort and to give him the remainder of the twenty-four hours for his own personal affairs and for the cultivation of his mental and moral powers, the acquisition of useful knowledge, and for rest and sleep.

The second clause of the section commands the legislature to pass laws "for the health and safety of employés in factories, smelters, and mines."

This provision must be regarded an an expression of the will of the people of the State with respect to the subjects and objects of legislation named in it; and they possessed the power to enact laws with respect to such subjects that the people of the United States had not conferred in the National Constitution exclusively on that government. Any laws adapted to the preservation of the health or safety of employés in factories, smelters, or mines is within the scope of this provision. The law must be connected with some of the objects named and calculated to effect that purpose. If it is not so connected and adapted the court has the right to hold that it is not within the scope of the provision; but if there is a reasonable doubt as to the connection and adaptation the advisability must be held by the court to have been with the law-making power. The court must be able to see clearly that the law was not so connected before holding it void for that reason.

If the power to pass the law is conceded the court cannot set it

aside because it may deem its enactment unnecessary or injudicious or because the court may think that experience has proven it so or because the court may think itself more sagacious than the
14 legislature, and can therefore *experience has proven it so or because the court may think itself more sagacious than the legislature, and can therefore* see more clearly that the law will retard rather than promote progress and prosperity, and will be a detriment to the commo- good when actually applied to human affairs amid the conditions of the future.

This brings us to the question, Is the first section of the statute limiting the period of employment of laboring men in underground mines to eight hours per day, except in cases of emergency, where life or property is in imminent danger, calculated to protect the health of such laboring men?

The effort necessary to successfu! mining if performed upon the surface of the earth in pure air and in the sunlight prolonged beyond eight hours might not injuriously affect the health of an able-bodied man; when so extended beneath the surface, away from the sunlight, might injuriously affect their health. It is necessary to use artificial means to supply pure air to men laboring in mines any considerable distance from the surface. That being so, it is reasonable to assume that the air introduced and the impure air beneath the surface when mixed is not as healthful as the free air upon the surface. The fact must be conceded that the breathing of pure air is wholesome and the breathing of impure air is unwholesome.

We cannot say that the law limiting the period of labor in underground mines to eight hours each day is not calculated to promote health; that it is not adapted to the protection of the health of the class of men who work in underground mines.

15 While the provision of the constitution under consideration makes it the duty of the legislature to enact laws to protect the health and to secure the safety of men working in underground mines and in factories and smelters, it does not prohibit the legislature from enacting other laws affecting such classes to promote the general welfare.

While the Constitution of the United States is a delegation of powers to that Government, with some express limitations upon the powers conferred, it also contains limitations upon the powers of the States. The government which it created is regarded as one of enumerated and delegated powers. On the other hand, while the State constitution contains some mandatory provisions, with others distinguishing the departments of the government and specifying the duties of various officers thereof, it contains many limitations upon the State, and is regarded in a general sense as a limitation upon the State government. The authority of the General Government is ascertained from the powers delegated, while those of the State government are ascertained from those not prohibited. The powers of the first are described by those delegated, and the powers of the latter consist of those not prohibited. This leaves the State legislature in the possession of all the law-making power not prohibited to it by

the Constitution of the United States, or the laws made in pursuance of it, or by the State constitution.

The enactment of some laws is made mandatory; the enactment of others is left to the discretion of the legislature as the public welfare may demand. Among the mandatory provisions of the constitution of this State is the one under consideration.

16 It is claimed that the enactment of the statute in question was forbidden by section 7 of article 1 of the constitution of the State, which is that "No person shall be deprived of life, liberty, or property without due process of law."

The petitioner insists that his trial was not and that his imprisonment is not according to "the law of the land," because the statute fixing the period of labor of a laboring man in underground mines was, as he claims, forbidden by the constitution, and therefore void. If the legislature had power to pass the law, there was no valid objection to his trial, fine, and imprisonment. If the law was valid the usual and ordinary process was adopted; if it was not valid the defendant was deprived of his liberty without due process of law.

It is also insisted that the provisions of the State law *was* forbidden by section 1 of article 14 of the Constitution of the United States as follows: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This section declares, 1st, that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside; they are made citizens of two distinct governments; 2nd, it de-

17 clares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The enactment of State laws depriving or abridging the privileges or immunities of citizens of the State is left to the State legislature, so far as this provision goes. It secures to citizens of the United States in any State the privileges and immunities of the citizens of that State.

Expounding the provision now under consideration, the Supreme Court of the United States said: "The constitutional provision there alluded to did not create those rights which it called privileges and immunities of citizens of the State. It threw around them in that clause no security for the citizen of the State in which they were claimed and exercised, nor did it profess to control the power of the State government over the rights of its own citizens. Its sole purpose was to declare to the several States that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify or impose restrictions on their exercise,

the same, neither more or less, shall be the measure of the rights of citizens of other States within your jurisdiction."

Slaughter-house cases, 16 Wall., 76.

As the plaintiff is a citizen of this State, the second clause of the first section last above quoted has no bearing upon his case, as his privileges and immunities must be ascertained from the constitution of the State and its laws.

The third clause of the section declares that no State shall "deprive any person of life, liberty, or property without due process of law."

This in effect is the same as section 7 of article 1 of the State constitution, and means process authorized by the law of the
18 land; and, as we have seen, if the State law which the plaintiff was charged with violating was valid, if the legislature had power to pass it, there was no substantial objection to the process. It was suitable and proper to the nature of the case and sanctioned by the established usages of the courts.

The last clause of section 1 of article 14 of the Federal Constitution declares that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

The slaves in the various States in which slavery existed having been liberated during the late war, Congress deemed it necessary to make them citizens of the United States and forbid the States the denial to them the equal protection of the law. At that time the laws of all the States in terms gave equal protection to all white persons. This amendment, however, is general and forbids the denial to any class of persons the equal protection of the laws by any State, and we have no doubt that class legislation is forbidden.

But some pursuits are attended with peculiar hazards and perils, the injurious consequences from which may be largely prevented by precautionary means, and laws may be passed calculated to protect the classes of people engaged in such pursuits. It is not necessary to extend the protection to persons engaged in other pursuits not attended with similar dangers. To them the law would be inappropriate and idle. So, if underground mining is attended with dangers peculiar to it, laws adapted to the protection of such miners from such danger should be confined to that class of mining and should not include other employments not subject to them; and if men engaged in underground mining are liable to be injured in
their health or otherwise by too many hours' labor each day
19 a law to protect them should be aimed at that peculiar wrong.

In this way laws are enacted to protect people from perils from the operation of railroads by requiring bells to be rung and whistles sounded at road crossings and the slacking of the speed of the trains in cities. So the sale of liquor is regulated to lessen the evils of the liquor traffic, and other classes of business are regulated by appropriate laws. In this way laws are designed and adapted to the peculiarities attending each class of business. By such laws different classes of people are protected by various acts and pro-

visions. In this way various classes of business are regulated and the people protected by appropriate laws from dangers and evils that beset them—safety is secured, health preserved, and the happiness and welfare of humanity promoted.

All persons engaged in business that may be attended with similar injury to health or otherwise, when regulated and controlled, should be subject to the same law; otherwise the law should be adapted to the special circumstances of the particular business.

The purpose of such laws is not advantage to any person or any class of persons, or disadvantages to any other person or class of persons. Necessary and just protection is the sole object.

An ordinance of the city and county of San Francisco prohibited the washing and ironing of clothes in public laundries and washhouses within certain prescribed limits of the city and county from ten o'clock at night until six o'clock on the morning of the following day, and one Soon Hing was fined and imprisoned for a violation of it, and he petitioned for a writ of *habeas corpus* on the
20 ground that the ordinance was void because it discriminated between the class of laborers engaged in the laundry business and those engaged in other kinds of business; that it discriminated between laborers beyond the designated limits and those within them; that it deprived the petitioner of the — to labor, and, as a necessary consequence, of the right to acquire property, and that the board had no power to pass it.

The writ was denied by the lower court and the judgment was brought before the Supreme Court of the United States and affirmed by that court. Among other things, that court said in its opinion: "The specific regulations for one kind of business which may be necessary for the protection of the public can never be the just ground of complaint because like restrictions are not imposed upon other business of a different kind. The discriminations which are open to objection are those where persons engaged in the same business are subject to different restrictions or are held entitled to different privileges under the same conditions. It is only then that the discriminations can be said to impair that equal right which all can claim in the enforcement of the laws."

Soon Hing *v.* Crowley, 113 U. S., 703.

Barbier *v.* Connolly, *id.*, 27.

Our attention has been directed to the rule by which the court should be governed in deciding upon the constitutionality of the law in question, and reference is made to the case of Dartmouth College *v.* Woodward, 4 Wheaton, 629, wherein Chief Justice Marshall, in delivering the opinion of the court, said: "That in no doubtful case would it (the court) pronounce a legislative act to be contrary to the Constitution."

21 In the Sinking Fund cases the same court said: "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the Government cannot encroach on the domain of another without danger. The safety of our institutions

depends in no small degree on a strict observance of this statutory rule."

99 U. S., 700.

Powell *v.* Pennsylvania, 127 U. S., 678.

In this last case the constitutionality of a statute of Pennsylvania prohibiting the manufacture or sale or offering for sale or having in possession with intent to sell oleomargarine butter was questioned. No evidence was offered on the trial in the court even to prove that the oleomargarine was impure or unwholesome; on the contrary, there was an offer to prove that it was a wholesome and nutritious article of food, in all respects as wholesome as butter produced from pure unadulterated milk or cream from unadulterated milk. The court held that whether the manufacture of oleomargarine of the kind described in the statute involved such danger to the public health as to require for the protection of the people the entire suppression of the business rather than its regulation in such manner as to permit its manufacture and sale to go on were questions of fact and of public policy which belonged to the legislative department to determine, and that the court could not interfere without usurping powers committed to the legislative department.

The case of People *v.* Warden of City Prison held the enactment of a law prohibiting any person from exercising the calling of a master plumber without passing an examination before a board of examiners a valid exercise of the police power. In its opinion
22 the court further held that if legislation is calculated to protect the public health and promote the public comfort and safety the exercise of the legislative discretion is not the only subject of judicial review, but those measures must have some relation to those ends.

39 N. E. R., 686.

We have examined a number of authorities to which reference has been made, and those which we deem most pertinent to the case in hand we will further examine in this opinion.

Judge Cooley says: "Whether a statute is constitutional or not is always a question of power—that is, a question whether the legislature in the particular case, in respect to the subject-matter of the act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. In any case in which this question is answered in the affirmative the courts are not at liberty to inquire into the proper exercise of the power. We must assume that legislative discretion has been properly exercised."

Cooley's Constitutional Limitations, 6th ed., page 220.

The same author says at pages 200 and 201: "That except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case."

Undoubtedly sovereignty resides in the people, and their will is expressed in constitutions and laws—in constitutions in the mode prescribed and in statutes through the legislature—and if the
23 law is in harmony with the Federal and State constitutions it must stand until the law-making power changes it. It is the duty of the court to interpret, construe, expound, and apply the law, whether it be expressed in constitutions or in statutes or whether it be the common law; but courts have not been entrusted with the law-making power; that power is in the hands of another department of government.

The supreme court of Massachusetts, in the case of The Commonwealth *v.* Hamilton Manufacturing Company, held that a law declaring that a woman should not be employed at labor by any person, firm, or corporation in any manufacturing establishment more than ten hours in any one day, except in certain cases, and in no cases more than sixty hours a week was constitutional and valid. In deciding the point the court said: "It does not forbid any person, firm, or corporation from employing as many persons or as much labor as such person, firm, or corporation may desire, nor does it forbid any person to work as many hours a day or week as he chooses. It merely provides that in an employment which the legislature has evidently deemed to some extent dangerous to health no woman shall be engaged in labor more than ten hours a day or sixty hours a week. There can be no doubt that such legislation can be maintained, either as a health or police regulation, if it were necessary to resort to either of these sources for power. This principal has been so frequently recognized in this Commonwealth that reference to the decisions is unnecessary."

120 Mass., 383.

In the case of Ritchie *v.* The People, 155 Ill., the following provision of the statute of that State was held unconstitutional and void: "No female shall be employed in any factory or work-
24 shop more than eight hours in any one day or forty-eight hours in any one week." In deciding upon the law the court said the police power of the State enables it to promote the health, comfort, safety, and welfare of society, and that it was very broad and far-reaching, but that it was not without its limitations; that "legislativ- acts passed in pursuance of it must not be in conflict with the constitution and must have some relation to the ends sought to be accomplished—that is to say, to the comfort, welfare, or safety of society;" and further on the court als- said: "But the police power of the State can only be permitted to limit or abridge such a fundamental right, as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare, and safety of society or the public." Just preceding the statement of this proposition reference is made to an inference and to a natural law. "There is no reasonable ground, at least none which has been made manifest to us in the argument of counsel, for fixing upon eight hours in one day as the limit within which women can

work without injury to her physique and beyond which if she work injury will necessarily follow."

The court assumed a very wide discretion in passing upon the reasonableness and appropriateness of the law which it pronounced absolutely void.

In Frorer *v.* The People, 141 Ill., 171, the court held a statute unconstitutional which made it unlawful for any natural or legal person while in the business of mining or manufacturing to engage or be interested in keeping or controlling any truck store, shop, or scheme for the furnishing of supplies, tools, clothing, provisions, or groceries to employés. The court said in its opinion that
25 "in all that relates to mining and manufacturing wherein they differ from other branches of industry we recognize the supremacy of the General Assembly to determine whether any, and, if any, what, statutes shall be enacted for their welfare and that of operatives therein and necessarily affecting them alone; but keeping stores and groceries or supplies of tools, clothing, and food, by whatever name, to sell to laborers in mines and manufactories is entirely independent of mining and manufacturing," and said further that it did not regulate the duties of employés and employe-in respect to mining; that it imposed disabilities as to contracting as to tools, clothing, and food, matters as to which all laborers in every other branch of industry are permitted to contract without any restriction. The principle objection to the law was that it was unequal. The court said that it was impossible under the police power that what is lawful if done by A if done by B can be a misdemeanor, the circumstances and conditions being the same.

A law of the State of New York to improve the public health by prohibiting the manufacture of cigars and the preparation of tobacco in tenement-houses in certain cases was held unconstitutional by the court of appeals. While the act professed to be a health law, the court was of the opinion that it was not. The court said: "It is plain that this is not a health law, and that it has no relation to the public health," and for that reason held it of no effect.

Matter of the Application of Jacobs, 98 N. Y., 98.

We do not agree with defendant's counsel that the business of mining is affected with a public interest and the legislature
26 had the power to pass the law for that reason. Mines are owned by private persons or corporation-, who have the exclusive use and control of them, as a farmer may own his farm and have the exclusive use and control of it. The fact that the business may benefit the public does not give the public any interest in the mine or its business or affect it with a public interest. It is not like the railroad business. Such property and business is owned by a private corporation, but the use of the road is in the public. Travelers and shippers have a common right to use the road for such purposes by paying fares or freights. The same may be said of other classes of business similarly affected with a public use and interest.

On this point the court said in the last-cited case: "Although the

legislature may declare it to be public, that does not necessarily determine its character. It must in fact be public, and if it is not, no legislative fiat can make it so."

Matter of Townsend, 39 N. Y., 171.
Matter of Deansville Cemetery Asso., 66 *id.*, 569.
Matter of Eureka Basin Warehouses and Mfg. Co., 99 *id.*, 42.
Rockwell *v.* Nearing, 35 *id.*, 302.

But while the business of mining may not be affected with a public interest the legislature may enact laws adapted to the promotion of the health and safety of men working in underground mines.

"Whatever difference of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does exist to the protection of the lives, health, and property of the citizens and to the preservation of good order and the public good.

The legislature cannot by any contract divest itself of the
27 power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim *solus populi suprema lex*, and they are to be attained and provided for by such appropriate means as the legislative discretion may devise; that discretion can no more be bargained away than the power itself."

Beer Co. *v.* Massachusetts, 97 U. S., 25.

The section of the statute whose constitutionality is involved in this case includes all employés and employers engaged in working underground mines; none are omitted who may be subject to the peculiar conditions that attend such mining. The provision of the State constitution quoted makes it the duty of the legislature to "pass laws to provide for the health and safety of employés in factories, smelters, and mines;" and we are not authorized to hold that the law in question is not calculated and adapted in any degree to promote the health and safety of persons working in mines and smelters. Were we to do so and declare it void, we would usurp the powers entrusted by the constitution to the law-making power.

The discharge of the petitioner is denied, and he is remanded to the custody of the sheriff named until discharged according to law.

We concur:
BARTCH, *J.*
MINER, *J.*

Endorsed: Albert F. Holden *v.* Harvey Hardy, sheriff. Opinion. Filed October 29th, 1896. Lilburn P. Palmer, clerk supreme court.

28 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Petition for Writ of Error. (Mine Case.)

And now comes Albert F. Holden, the plaintiff herein, and shows that on the 29th day of October, 1896, judgment herein was rendered in this court against this plaintiff and affirming a conviction of this plaintiff under chapter 72 of the Laws of Utah, approved March 30th, 1896; in which judgment and the proceedings in the cause prior thereto certain errors were committed, to the prejudice of this plaintiff; all of which will more fully appear from the assignment of errors which is presented with this petition.

Wherefore the plaintiff prays that upon the record, proceedings, and judgment in this cause, now here before the court and the judges thereof, that a writ of error may be allowed and issue removing this cause to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated October 30th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

29 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Assignment of Errors. (Mine Case.)

The plaintiff in this cause, in connection with his petition for a writ of error, makes the following assignment of errors, to wit:

The supreme court of the State of Utah erred in the following respects, to wit:

First. In holding that chapter 72 of the Laws of Utah, approved March 30th, 1896, is a valid enactment and not repugnant to the Constitution of the United States, and in affirming the conviction of the plaintiff thereunder, and in not holding that said act was repugnant to the Constitution of the United States and void and the conviction of the plaintiff thereunder unlawful.

Second. In holding that said act did not deprive the plaintiff of his property and liberty without due process of law.

Third. In holding that said act did not impair lawful contracts made by plaintiff and his right to make lawful contracts.

Fourth. In holding said act is not class legislation and is equal and uniform.

Fifth. In holding that it does not deprive the plaintiff of the equal protection of the laws or abridge his privileges and immunities as a citizen of the United States.

Dated October 30th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

30 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Order Allowing Writ of Error. (Mine Case.)

The plaintiff, by his attornies, having filed herein and presented to the court his petition praying the allowance of a writ of error to be urged by him, and praying that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and it sufficiently appearing from the record and procedings herein that in this cause there is drawn in question the validity of a statute of the State of Utah on the claim that it is repugnant to the Constitution of the United States, and that the decision was in favor of its validity—

On consideration thereof it is ordered that the writ of error herein as prayed be, and the same is, allowed upon the plaintiff giving a bond in the sum of one thousand (1,000) dollars, which shall operate as a supersedeas bond.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Dated Oct. 30th, 1896.

Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

31 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARVY, Sheriff of Salt Lake County, Defendant.
} Bond on Writ of Error. (Mine Case.)

Know all men by these presents that we, Albert F. Holden, as principal, and John W. Donnellan and Sam. J. Kenyon, as sureties, all of Salt Lake City, State of Utah, are held and firmly bound unto the defendant, Harvy Hardy, as sheriff of Salt Lake county, in the sum of one thousand (1,000) dollars, to be paid to the defendant, his successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30 day of October, 1896.

Whereas in a suit in the supreme court of the State of Utah between the said Albert F. Holden, as plaintiff, and the said Harvy Hardy, as sheriff and defendant, judgment was rendered against the plaintiff on the 29th day of October, 1896, affirming a conviction of the plaintiff for an alleged violation of chapter 72 of the Laws of Utah, approved March 30th, 1896, and the said plaintiff having obtained a writ of error to reverse the said judgment and filed a copy thereof in the clerk's office of the said court, and a citation directed to the said defendant, citing him to be and appear in the Supreme Court of the United States, in the city of Washington, on the 21st day of December, 1896:

Now, the condition of *the* this obligation is such that if the said Albert F. Holden shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good and shall abide the order and judgment of the court made
32 therein, then the above obligation to be void; else to remain in full force and effect.

A. F. HOLDEN. [SEAL.]
JOHN W. DONNELLAN. [SEAL.]
SAM. J. KENYON. [SEAL.]

Sealed and delivered in the presence of—
W. H. SHEARMAN.

The foregoing bond is approved this 30th day of October, 1896.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

(Copy.)
Filed Oct. 31, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

33 THE UNITED STATES OF AMERICA, *ss:*

To Harvy Hardy, sheriff of Salt Lake county, in the State of Utah, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 21st day of December, 1896, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Utah, wherein Albert F. Holden is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of Salt Lake, in said State of Utah, this 31st day of October, in the year of our Lord one thousand eight hundred and ninety-six.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Personal service on me of a copy of the above citation was made Oct. 31st, 1896, at Salt Lake City, Utah.

HARVEY HARDY,
Sheriff Salt Lake Co., Utah.

34 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Utah, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Albert F. Holden, plaintiff, and Harvy Hardy, as sheriff of Salt Lake county, defendant, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Albert F. Holden, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 21st day of December, 1896, in the

Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court
35 may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 31st day of October, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal United States Circuit Court, District of Utah.]

JERROLD R. LETCHER,
Clerk U. S. Circuit Court, District Utah.

Allowed by the Honorable Charles S. Zane, chief justice supreme court, State of Utah.

36 UNITED STATES OF AMERICA.

STATE OF UTAH, }
County of Salt Lake. }

I, Lilburn P. Palmer, clerk of the supreme court of Utah, in pursuance of a writ of error allowed in the case wherein Albert F. Holden is plaintiff *v.* Harvey Hardy, sheriff, etc., is defendant, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, bond, order allowing writ, together with the original citation and writ of error, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, and bond is a full, true, and correct copy of the several originals thereof on file and of record in my office.

Seal Supreme Court State of Utah, Jan. 4, 1896.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of Utah this 4th day of November, A. D. 1896.

LILBURN P. PALMER,
Clerk Supreme Court of Utah.

Endorsed on cover: Case No. 16,434. Utah supreme court. Term No., 655. Albert F. Holden, plaintiff in error, *vs.* Harvy Hardy, sheriff of Salt Lake county, in the State of Utah. Filed November 19, 1896.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 394.

ALBERT F. HOLDEN, PLAINTIFF IN ERROR,

vs.

JOSEPH HARDY, SHERIFF OF SALT LAKE COUNTY, IN THE STATE OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

FILED NOVEMBER 24, 1898.

(16,437.)

(16,437.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 658.

ALBERT F. HOLDEN, PLAINTIFF IN ERROR,

vs.

ARVY HARDY, SHERIFF OF SALT LAKE COUNTY, IN THE STATE OF UTAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 27, 1896.

13654

a In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant. } On *habeas corpus.*

Transcript — Mill Case.

1 STATE OF UTAH, *County of Salt Lake.*

In the Justice's Court of the First Precinct, Salt Lake City.

Before W. H. Sells, justice of peace.

THE STATE OF UTAH
vs.
A. F. HOLDEN, Defendant.

Complaint.

On this twentieth day of June, A. D. one thousand, eight hundred and ninety-six, before me, W. H. Sells, justice of the peace within and for the first precinct of Salt Lake City, Salt Lake county, State of Utah, personally appeared C. O. Whittemore, county and prosecuting attorney for the county of Salt Lake, in the State of Utah, in his official capacity, and in the name and by the authority of the State of Utah, informs the court upon his oath that the said defendant, Albert F. Holden, on the 6th day of June, A. D. 1896, at the county of Salt Lake, State of Utah, unlawfully did employ one William Hooley to work and labor in a certain concentrating mill in Bingham canyon, in the county aforesaid, the same being an institution for the reduction of ores, for the period of twelve hours each day, and said defendant, on the date aforesaid and continuously since said time, has unlawfully required said William Hooley, under and by virtue of said employment, to work and labor in said concentrating mill aforesaid for the period of twelve hours each day, and that said employment was not in case of an emergency or where life or property was in imminent danger, contrary to the provisions of the statute of the State aforesaid, and against the peace and dignity of the State of Utah.

C. O. WHITTEMORE,
County Attorney.

Subscribed and sworn to before me the day and year first above written.

W. H. SELLS,
Justice of the Peace.

2 (Title of Court and Cause.)

Warrant of Arrest.

The State of Utah to the sheriff, constable, or any policeman of Salt Lake county, State of Utah, Greeting:

A complaint, upon oath, having been this day made before me, W. H. Sells, a justice of the peace, within and for the first precinct, Salt Lake City, county of Salt Lake, State of Utah, by C. O. Whittemore, county attorney, that the offense of violating the provisions of chapter 72 of the Laws of the State of Utah, known as the eight-hour law, has been committed, and accusing Albert F. Holden thereof:

You are therefore commanded forthwith to arrest the above-named Albert F. Holden and bring him before me, forthwith, at my office in said precinct and county, or, in case of my absence or inability to act, before the nearest and most accessible magistrate in this county, to answer to the charge preferred against him.

Witness my hand at Salt Lake City, in said county, this 22nd day of June, 1896.

(Signed) W. H. SELLS,
Justice of the Peace.

STATE OF UTAH, }
County of Salt Lake, } ss:

I hereby certify that I received the within warrant on the 22nd day of June, A. D. 1896, and served the same by arresting the within-named defendant, Albert F. Holden, and bringing him into court this 22nd day of June, A. D. 1896.

(Signed) HARVEY HARDY, *Sheriff,*
Per JOHN MONTGOMERY, JR.,
Deputy Sheriff.

Fees, $2.00.

3 (Title of Court and Cause.)

And now comes the defendant and for a plea to the complaint herein, says he is not guilty in manner and form as charged.

And for a further plea the said defendant, and admitting that at the time and place alleged he employed the said William Hooley for the hours per day, and for the work and in the mill alleged, and that the said William Hooley has since worked in pursuance of said employment, says he is not guilty because he is a native-born citizen of the United States, residing in the State of Utah, that the said William Hooley voluntarily engaged his services for the hours per day alleged, and that the facts charged do not constitute a crime, because the act of the legislature of the State of Utah, which creates and defines the supposed offense, and is known as chapter LXXII of the laws of the State of Utah, approved March 30th, 1896, is repugnant to the Constitution of the United States, and especially to that part of said Constitution known as the XIV amendment, and that the said act of the legislature of the State of Utah, is void,

and repugnant to and in violation of the Constitution of the United States in these respects:

It deprives the defendant and all employers and employees of the right to make contracts in a lawful way and for lawful purposes.

It is class legislation and not equal or uniform in its provisions.

It deprives the defendant and employers and employees of the equal protection of the laws, abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law.

THOS. MARSHALL,
W. H. DICKSON,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Defendant.

4 (Title of Court and Cause.)

Copy of Entries in Justice's Docket.

Filed affidavit of C. O. Whittemore this 20th day of June, 1896, charging defendant with the crime of violating the eight-hour law. Warrant of arrest issued on the 22d day of June, 1896, and thereafter warrant returned on the 22d day of June, 1896. Defendant appeared on the 22d day of June, 1896, and entered plea of not guilty. Case set for trial on the 25th day of June, 1896, 9 a. m. Defendant admitted to bail in the sum of his own recognizance. Plea of defendant filed.

Case tried on the 25th day of June, 1896, before the court, and the people were represented by C. O. Whittemore, attorney, and the defendant by Bennett, Harkness, Howat & Bradley, attorneys. Witnesses sworn and examined on the part of the people *were* Albert F. Holden.

Now, on this 25th day of June, 1896, at 9 o'clock a. m., this cause coming on to be heard, and The State, the plaintiff herein, appearing by C. O. Whittemore, county attorney, and Frederick Garfield Waite, and the defendant appearing in person and by Messrs. Bennett, Harkness, Howat & Bradley, his attorneys, and the court having heard the evidence in the case and being fully advised in the premises, doth find that the defendant is guilty as charged in the complaint herein.

It is therefore ordered and adjudged by the court, that the defendant is guilty of a misdemeanor as charged in the complaint herein in violation of the provisions of chapter 72 of the Laws of the State of Utah of 1896, approved March 30th, 1896, and now in force.

And it is therefore further ordered and adjudged that said defendant pay a fine of fifty dollars ($50) and the costs of this suit taxed at seven and $\frac{80}{100}$ dollars ($7.80), and that the defendant be imprisoned in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven (57) days, or until said fine and costs be paid, if they be sooner paid, or until so much of said fine and costs

be paid as shall remain due and unpaid after deducting from said fine and costs the amount represented by each day of said confinement at hard labor at the rate of one dollar per day, or until the same be secured to be paid as provided by law.

5 (Title of Court and Cause.)

Commitment.

The State of Utah to the sheriff of Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing William Hooley to work and labor in a concentrating mill in Bingham canyon in said county, for a period of twelve hours each day, contrary to the provisions of chapter LXXII of the Laws of 1896 of the State of Utah, said crime having been committed within the limits of Salt Lake county, and State of Utah, on the 6th day of June, A. D. 1896, contrary to the statutes of said State of Utah in such case made and provided; and,

Whereas, the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50) and costs taxed at seven and $\frac{80}{100}$ dollars ($7.80) and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days, or until said fine and costs be fully paid, if it be sooner paid; and,

Whereas, said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom;

Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days, or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars ($57.80) be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

6 STATE OF UTAH, }
County of Salt Lake. }

To the honorable the supreme court of the State of Utah:

The petition of Albert F. Holden respectfully shows: That he is a native-born citizen of the United States and a citizen of the State of Utah, residing in the city and county of Salt Lake.

That he is imprisoned and restrained in his liberty by Harvey Hardy, acting as sheriff of the county of Salt Lake in said State of Utah, and is in the custody of said sheriff.

That the cause of his imprisonment is as follows:

That on or about the 20th day of June, 1896, C. O. Whittemore, county attorney for said Salt Lake county, filed in the justice's court of the first precinct for said city of Salt Lake and before W. H. Sells, Esq., the justice of the peace of said precinct, a complaint against your petitioner for a violation of chapter LXXII of the Laws of the Legislature of the State of Utah by the employment for more than eight hours per day of William Hooley, a copy of which complaint is annexed and made a part hereof. That a warrant was issued, your petitioner arrested, and a copy of the warrant and return thereon is annexed and made a part of this petition.

That your petitioner filed pleas to said complaint, a copy of which is annexed as a part of this petition.

That afterward, on the 25th day of June, 1896 the cause was heard in said court and your petitioner adjudged guilty as charged, and adjudged to pay a fine of fifty dollars and in default of payment to be imprisoned in the county jail of Salt Lake county, Utah.

A copy of the docket and proceedings before said court is annexed and make a part hereof.

That in default of payment, a warrant of commitment was issued by said justice from said court, and delivered to the sheriff of said county, who arrested and holds your petitioner in actual custody on said warrant of commitment, a copy of which is annexed and made a part hereof.

And on information and belief, your petitioner alleges that
7 no other or further cause exists for the imprisonment of your petitioner.

Wherefore your petitioner prays that a writ of *habeas corpus* may be issued returnable in the supreme court of the State of Utah, that your petitioner be discharged from his imprisonment and that such relief may be granted as the case requires.

ALBERT F. HOLDEN, *Petitioner.*

STATE OF UTAH,
County of Salt Lake, } ss:

Albert F. Holden, being duly sworn, says: I am the petitioner named in the foregoing petition, and said petition is true of my own knowledge, except as to matters stated therein on information and belief, and as to those matters I believe it to be true.

——.

Subscribed and sworn to before me, June 29, 1896.

C. E. STANTON, *County Clerk,*
[SEAL.] By FRED. W. DENNIS, *Deputy.*

STATE OF UTAH,
County of Salt Lake, } ss:

STATE OF UTAH
vs.
ALBERT F. HOLDEN.

On the annexed petition of Albert F. Holden a writ of *habeas corpus* is allowed, returnable before the supreme court of the State of Utah, at 10 o'clock a. m. on the 14th day of September, 1896, at the court-room in Salt Lake City, Utah, and J. H. Miller is appointed to serve said writ.

C. S. ZANE,
Chief Justice Supreme Court, Utah.

8 STATE OF UTAH,
County of Salt Lake, } ss:

Harvey Hardy, sheriff of the county of Salt Lake, State of Utah:

You are commanded to have the body of Albert F. Holden, by you detained as it is alleged, before the supreme court of the State of Utah, at the supreme court room in the city and county building in Salt Lake City, Salt Lake county, State of Utah, at 10 o'clock a. m. on the 14th day of Sept., A. D. 1896, to be dealt with according to law, and to abide such order as the court or judge thereof shall make in the premises, and have with you then and there this writ, with a return of your doings in the premises.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

STATE OF UTAH,
Salt Lake County, } ss:

J. H. Miller, being duly sworn, says that on the 1st day of July, 1896, he served the original writ, of which the foregoing is a true copy, by leaving said original writ with John Montgomery, Jr., a deputy sheriff of said county, the person holding and detaining said Albert F. Holden in custody, the said Harvey Hardy being sick and confined to his house and not having said Albert F. Holden in custody.

J. H. MILLER.

[SEAL.] Subscribed and sworn to before me by said J. H. Miller this 1st day of August, 1896.

WM. M. BRADLEY,
Notary Public, Salt Lake County, Utah.

It is stipulated that the foregoing is a full and complete transcript of the record and proceedings in this case, including the proceedings in the justice's court, and is a full transcript of the case for hearing in this court, except the sheriff's return to the writ, which, when made, may be added to the transcript as a part thereof.

——— ———,
Attorneys for the State.

——— ———.
Attorneys for Petitioner.

9 In the Supreme Court of the State of Utah.

STATE OF UTAH
v.
ALBERT F. HOLDEN. } Return on *Habeas Corpus.*

To the hon. the supreme court of the State of Utah and to the judges of said court:

The undersigned, sheriff of Salt Lake county, State of Utah, for answer and return to the petition and writ of *habeas corpus* herein respectfully states—

That on the first day of July, 1896, the writ was personally served by me, in the city and county of Salt Lake, State of Utah, and I annex hereto as part of my return the writ so served.

At the time of service I had the said Albert F. Holden in my custody as said sheriff.

That the cause and grounds of his detention is as follows:

A commitment dated the 25th day of June, 1896, issued and delivered to me by W. H. Sells, Esq., a justice of the peace of the first precinct, in said Salt Lake City, and in pursuance of shich I arrested and detained the said Albert F. Holden. I attach a full, true, and correct copy of said commitment as part of my return.

The execution of said commitment by me is the sole *of* cause of the arrest and detention of said Holden.

By the direction of the court I released the said Albert F. Holden on recognizance until the further order of the court.

Respectfully submitted.

HARVEY HARDY,
Sheriff Salt Lake County,
By JOHN MONTGOMERY, JR.,
Deputy Sheriff.

10 STATE OF UTAH, }
County of Salt Lake, } *ss:*

Harvey Hardy, sheriff of Salt Lake county, State of Utah:

You are commanded to have the body of Albert F. Holden, by you detained, as it is alleged, before the supreme court of the State of Utah, at the supreme court room, in the city and county building in Salt Lake City, Salt Lake county, State of Utah, at 10 o'clock a. m., on the 14th day of September, A. D. 1896, to be dealt with according to law, and to abide such order as the court or judge thereof shall make in the premises; and have with you then and there this writ, with a return of your doings in the premises.

C. S. ZANE,
Chief Justice of the Supreme Court of Utah.

11 In the Justice Court of the First Precinct, Salt Lake City, State of Utah.

Before W. H. Sells, justice of the peace.

THE STATE OF UTAH
v.
ALBERT F. HOLDEN. } Commitment.

The State of Utah to the sheriff of said Salt Lake county or any of his deputies, Greeting:

Whereas, on the 25th day of June, A. D. 1896, one Albert F. Holden was brought before me, W. H. Sells, a justice of the peace of the first precinct of Salt Lake City, in said county and State, charged with the crime of a misdemeanor in employing William Hooley to work and labor in a certain concentrating mill in Salt Lake county, Utah, for a period of twelve hours each day, contrary to the provisions of chapter 72 of the Laws of 1896 of said State of Utah, said crime having been committed within the limits of Salt Lake county and State of Utah on the 6th day of June, 1896, contrary to the statutes of said State of Utah in such case made and provided; and

Whereas the said defendant was adjudged guilty of said offense and sentenced to pay a fine in the penal sum of fifty dollars ($50.00) and costs, taxed at seven and $\frac{80}{100}$ dollars ($7.80), and to be imprisoned in the county jail of Salt Lake county, State of Utah, at hard labor for the term of fifty-seven (57) days, or until said fine and costs be fully paid, if it sooner be paid; and

Whereas said fine has not been paid nor secured to be paid, nor has any appeal been taken therefrom:

12 Now, therefore, you are hereby forthwith commanded to take into your custody said Albert F. Holden, and him safely keep in confinement at hard labor in the county jail of Salt Lake county, State of Utah, for the term of fifty-seven days or until said fine and costs aggregating the sum of fifty-seven and $\frac{80}{100}$ dollars, $57.80, be paid, if it be sooner paid, or until such time as he shall pay so much of said fine and costs as shall not have been paid by said hard labor in said county jail at the rate of one dollar per day, to be credited on said fine and costs for each day of said confinement at hard labor, or until he shall secure the same to be paid as provided by law.

Given under my hand this 25th day of June, A. D. 1896.

W. H. SELLS,
Justice of the Peace.

13 In the Supreme Court of the State of Utah, Regular September Term.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County, Defendant.

SEPTEMBER 17, 1896.

This cause, coming regularly to be heard, was argued by Thomas Marshall and Robert Harkness, for the petitioner; by C. S. Varian and O. W. Powers, in reply, was submitted, and by the court taken under advisement.

Title of Court and Cause.

NOVEMBER 11TH, 1896.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the application for the discharge of the defendant be, and the same is hereby, denied and he is remanded to the custody of the sheriff until released in pursuance to law.

14 In the Supreme Court of the State of Utah, September Term, 1896.

STATE OF UTAH
v.
ALBERT F. HOLDEN.

ZANE, *C. J.:*

The defendant was convicted of a violation of section 2 of "An act regulating the hours of employment in underground mines and in smelters and ore reduction works," as follows:

"SECTION 1. The period of employment of workingmen in all underground mines or workings shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SECTION 2. The period of employment of workingmen in smelters, and all other institutions for the reduction or refining of ores or metals shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger.

SECTION 3. Any person, body corporate, agent, manager or employer, who shall violate any of the provisions of section 1 and 2 of this act, shall be deemed guilty of a misdemeanor."

Sess. Laws Utah, 1896, p. 219.

15 This case is analogous to the case of the State of Utah *v.* Albert F. Holden, decided at this term, except that the defendant in that case was convicted of a violation of the first section of the above act in employing a workingman in underground mining more than eight hours per day, and the conviction in this one was for the employment of one William Hooley in his concentrating mill for the reduction of ores more than eight hours per

day. The conditions with respect to health of laborers in underground mines doubtless differ from those in which they labor in smelters and other reduction works on the surface. Unquestionably the atmospheric and other conditions in mines and reduction works differ. Poisonous gasses, dust, and impalpable substances arise and float in the air in stamp mills, smelters, and other works in which ores containing metals combined with arsenic or other poisonous elements or agencies are treated, reduced, and refined, and there can be no doubt that prolonged effort day after day, subject to such conditions and agencies, will produce morbid, noxious, and often deadly effects in the human system. Some organism and systems will resist and endure such conditions and effects longer than others. It may be said that labor in such conditions must be performed. Granting this, the period of labor each day should be of a reasonable length. Twelve hours per day would be less injurious than fourteen, ten than twelve, and eight than ten. The legislature has named eight; such a period was deemed reasonable.

The people of the State in their constitution made it mandatory upon the legislature to "pass laws to provide for the health and the safety of the employés in factories, smelters, and mines."

Sec. 6, article 16, constitution Utah.

16 We do not feel authorized to hold that the statute quoted was not designed, calculated, and adapted to promote the health of the class of men who labor in smelters and other works for the reduction and treatment of ores; nor can we say that the law conflicts with any provision of the Constitution of the United States; nor do we wish to be understood as intimating that the power to pass the law does not exist in the police powers of the State. The authority to pass laws calculated and adapted to the promotion of the health, safety, or comfort of the people, and to secure the good order of society and the general welfare undoubtedly is found in such police powers. The law in question is confined to the protection of that class of people engaged in labor in underground mines and in smelters and other works wherein ores are reduced and refined.

This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters and other works for the reduction and refining of ores; therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments. Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government.

For a more extended consideration of the questions raised by the assignment of errors in this case, the opinion filed in the case between the same parties, *supra*, is referred to. That case we
17 now reaffirm as governing this one.

The application for the discharge of the defendant is denied, and he is remanded to the custody of the sheriff until released in pursuance of law.

We concur:

BARTCH, *J.*
MINER, *J.*

18 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Petition for Writ of Error. (Mill Case.)

And now comes Albert F. Holden, the plaintiff herein, and shows that on the 29th day of October, 1896, judgment herein was rendered in this court against this plaintiff and affirming a conviction of this plaintiff under chapter 72 of the Laws of Utah, approved March 30th, 1896; in which judgment and the proceedings in the cause prior thereto certain errors were committed, to the prejudice of this plaintiff; all of which will more fully appear from the assignment of errors which is presented with this petition.

Wherefore the plaintiff prays that upon the record, proceedings, and judgment in this cause, now here before the court and the judges thereof, that a writ of error may be allowed and issue removing this cause to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated Nov. 12th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

19 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Order Allowing Writ of Error. (Mill Case.)

The plaintiff, by his attornies, having filed herein and presented to the court his petition praying the allowance of a writ of error to be urged by him, and praying that a transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United

States, and it sufficiently appearing from the record and proceedings herein that in this cause there is drawn in question the validity of a statute of the State of Utah on the claim that it is repugnant to the Constitution of the United States, and that the decision was in favor of its validity—

On consideration thereof it is ordered that the writ of error herein as prayed be, and the same is, allowed upon the plaintiff giving a bond in the sum of one thousand (1,000) dollars, which shall operate as a supersedeas bond.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Dated Nov. 13th, 1896.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

20 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
vs.
HARVY HARDY, Sheriff of Salt Lake County, Defendant.
} Assignment of Errors. (Mill Case.)

The plaintiff in this cause, in connection with his petition for a writ of error, makes the following assignment of errors, to wit:

The supreme court of the State of Utah erred in the following respects, to wit:

First. In holding that chapter 72 of the Laws of Utah, approved March 30th, 1896, is a valid enactment and not repugnant to the Constitution of the United States, and in affirming the conviction of the plaintiff thereunder, and in not holding that said act was repugnant to the Constitution of the United States and void and the conviction of the plaintiff thereunder unlawful.

Second. In holding that said act did not deprive the plaintiff of his property and liberty without due process of law.

Third. In holding that said act did not impair lawful contracts made by plaintiff and his right to make lawful contracts.

Fourth. In holding said act is not class legislation and is equal and uniform.

Fifth. In holding that it does not deprive the plaintiff of the equal protection of the laws or abridge his privileges and immunities as a citizen of the United States.

Dated Nov. 12th, 1896.

MARSHALL & ROYLE,
DICKSON, ELLIS & ELLIS,
BENNETT, HARKNESS,
HOWAT & BRADLEY,
Attorneys for the Plaintiff.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

21 THE UNITED STATES OF AMERICA, *ss:*

To Harvy Hardy, sheriff of Salt Lake county, in the State of Utah, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the 21st day of December, 1896, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Utah, wherein Albert F. Holden is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of Salt Lake, in said State of Utah, this 13th day of November, in the year of our Lord one thousand eight hundred and ninety-six.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

A copy of the foregoing citation was personally served on me at the city of Salt Lake, in the State of Utah, on the — day of ——, 1896.

HARVEY HARDY,
Sheriff of Salt Lake Co., Utah.
CLARK.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

22 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Utah, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Albert F. Holden, plaintiff, and Harvy Hardy, as sheriff of Salt Lake county, defendant, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Albert F. Holden, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 21st day of December, 1896, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court
23 may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 13 day of November, in the year of our Lord one thousand eight hundred and ninety-six.

Seal United States Circuit Court, District of Utah.

JERROLD R. LETCHER.

Allowed by the Hon. Chas. S. Zane, chief justice of the supreme court of Utah.

Filed Nov. 13, 1896.

LILBURN P. PALMER,
Clerk Supreme Court, Utah.

24 In the Supreme Court of the State of Utah.

ALBERT F. HOLDEN, Plaintiff,
v.
HARVEY HARDY, Sheriff of Salt Lake County.
} Bond on Writ of Error. Mill Case.

Know all men by these presents that we, Albert F. Holden, as principal, and John W. Donnellan and Sam. J. Kenyon, as sureties, all of Salt Lake City, State of Utah, are held and firmly bound unto the defendant, Harvey Hardy, as sheriff of Salt Lake county, in the sum of one thousand (1,000) dollars, to be paid to the defendant, his successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of October, 1896.

Whereas in a suit in the supreme court of the State of Utah between the said Albert F. Holden, as plaintiff, and the said Harvey Hardy, as sheriff and defendant, judgment was rendered against the plaintiff on the 11th day of November, 1896, affirming a conviction of the plaintiff for an alleged violation of chapter 72 of the Laws of Utah, approve- March 30th, 1896, and the said plaintiff having obtained a writ of error to reverse the said judgment and filed a copy thereof in the clerk's office of the said court, and a citation directed to the said defendant, citing him to be and appear in the Supreme Court of the United States, in the city of Washington, on the 21st day of December, 1896:

Now, the condition of this obligation is such that if the
25 said Albert F. Holden shall prosecute said writ of error to effect and answer all damages and costs if he fail to make the said plea good, and shall abide the order and judgment of the court made therein, then the above obligation to be void; else to remain in full force and effect.

ALBERT F. HOLDEN. [SEAL.]
JOHN W. DONNELLAN. [SEAL.]
SAM. J. KENYON. [SEAL.]

Sealed and delivered in the presence of—
W. H. SHEARMAN.

The foregoing bond is approved this 13th day of November, 1896.

C. S. ZANE,
Chief Justice of the Supreme Court of the State of Utah.

Marked: Filed Nov. 13, 1896. Lilburn P. Palmer, clerk supreme court, Utah.

26 UNITED STATES OF AMERICA.

STATE OF UTAH,
County of Salt Lake, } ss:

I, Lilburn P. Palmer, clerk of the supreme court of the State of Utah, in pursuance of a writ of error allowed in the case of Albert F. Holden, plaintiff, *v.* Harvey Hardy, sheriff of Salt Lake county, defendant, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, bond, order allowing writ of error, together with the original citation and writ of error, all in and of said court and cause, to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, bond, and orders is a full, true, and correct copy of the several originals thereof on file or of record in my office.

Seal Supreme Court State of Utah, Jan. 4, 1896.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of the State of Utah, this 18th day of November, A. D. 1896.

LILBURN P. PALMER,
Clerk Supreme Court of the State of Utah,
By H. W. GRIFFITH,
Deputy Clerk.

Endorsed on cover: Case No. 16,437. Utah supreme court. Term No., 658. Albert F. Holden, plaintiff in error, *vs.* Harvy Hardy, sheriff of Salt Lake county, in the State of Utah. Filed November 24, 1896.